OPINION
44-102

April 3, 1944 (OPINION)

SCHOOLS AND SCHOOL DISTRICTS

RE: Bond issues

Your letter of March 30, addressed to the Attorney General, was duly received, and as Mr. Strutz was to be out of town, he turned the letter over to me for reply.

I understand from your letter that your bond issue of $16,000.00, made in 1941, was made for the purpose of funding outstanding certificates of indebtedness. The law under which these funding bonds were issued, I presume, was chapter 105 of the Laws of 1935, later amended as to the time within which bonds could be issued. This law required, at the time the bonds were issued, the levy of a sinking fund sufficient to retire the bonds as they became due. The law further provided that there should be appropriated to the sinking fund all taxes levied for the payment of the indebtedness represented by the certificates funded; that is, if certificates of indebtedness had been issued against certain uncollected taxes theretofore levied, such taxes were pledged under the provisions of section 2079b5 of the 1925 Supplement, as amended by chapter 247 of the Laws of 1933. It is my opinion that no part of the sinking fund created at the time the bonds were issued, or of the moneys required to be paid into that sinking fund, can be diverted from the sinking fund until the bonds are retired. You say that, under a law which you did not know of at the time of the bond issue, fifty-two percent of prior taxes were to be held by the County Auditor. I know of no such law, and if you have the citation of such a provision, I would like to have the citation. Under the provisions of chapter 106, Laws of 1939, your district has the right to prepay any bonds held by the School Land Department for the payment of which you have moneys properly applicable to such payment. In other words, as your sinking fund accumulates under the provision above referred to, you do not have to wait until the bonds mature before applying the sinking fund in payment. Therefor, if you have, as indicated by your letter, $15,000.00 in your sinking fund applicable to the payment of these bonds you can now use that sinking fund to pay off bonds outstanding, although not yet due. This would, as I understand your letter, leave only $2,000.00 outstanding of this bond issue. As I indicated above, I do not think you can divert any of this money properly going into your sinking fund, simply because your sinking fund is accruing so rapidly as to give you more money in the sinking fund than you anticipated.

Under the provisions of section 2079b5, all the taxes against which a certain issue of certificates of indebtedness was issued must be set aside to redeem those certificates, and under the provisions of chapter 195 of the Laws of 1935, these taxes, as collected, would go into the sinking fund. Therefor, if the certificates of indebtedness funded by the 1941 bond issue consist of more than one separate issue of certificates, and enough taxes required to be set aside to pay that particular issue have been paid, the remaining taxes against which that particular issue of certificates was made, would become a part of your general fund; that is, taxes against which certificates of indebtedness have been issued are released from the lien of the tax certificates, as soon as sufficient of the taxes against which the certificates were issued have been set aside for the payment of the certificates. If this should be the situation with regard to your bond issue, then, in my opinion, the taxes thus released from the lien for payment of these certificates can go into your general fund. This may possibly release some of the money which your County Auditor has transferred to this sinking fund. This is the only way I can see in which to relieve your present financial situation. The solution suggested in your letter is, in my opinion, not allowable, as the law requires these moneys, required to be credited to your sinking fund, cannot under any circumstances be used for any purpose except retirement of the bonds, and there are penalties provided, making your treasurer criminally liable for the payment of these sinking funds for any other purpose than to retire the bonds, and no agreement with the holder of the bonds could relieve him from this liability, in my opinion.

ALVIN C. STRUTZ
Attorney General